



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 8
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DENVER, CO 80202-2466**

September 1, 2000

Ref: 8EPR-EP

David C. Gibbs
Division Administrator
FHWA Utah Division
2520 West 4700 South, Suite 9A
Salt Lake City, Utah, 84118

Byron Parker, Project Director
Utah Department of Transportation
3995 South 700 East, Suite 100A
Salt Lake City, UT 84107

Re: Legacy Parkway, I-215 at 2100 North in Salt
Lake City to I-15 and U.S. 89 near
Farmington in Salt Lake and Davis Counties,
Utah, Final Environmental Impact Statement
and Section 4(f), 6(f) Evaluation CEQ#
000238

Dear Messrs. Gibbs and Parker:

In accordance with the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the Region 8 Office of the Environmental Protection Agency (EPA) has reviewed the above-referenced Final Environmental Impact Statement (FEIS). EPA provided comments on the Draft EIS for the subject project on January 6, 1999. EPA rated the DEIS as EU-3 (environmentally unsatisfactory - inadequate) and recommended that the lead agencies issue a supplement to the DEIS to fully address the issues, and provide the public an opportunity for comment on the results of the re-analysis and new information. Since that time, EPA has worked with the Federal Highway Administration (FHWA), Corps of Engineers (Corps), U.S. Fish and Wildlife Service, and the Utah Department of Transportation (UDOT) in order to resolve those comments.

EPA's major concerns at the DEIS stage included: unacceptable environmental impacts to wetlands of national significance; insufficient information on indirect wetland impacts; inadequate disclosure and analysis on purpose and need; incomplete analysis of alternatives to building a new road; and inappropriate segmentation of this project for alternative and impact analysis. These concerns have been addressed in part, and we appreciate the efforts by FHWA and UDOT in this regard. Our remaining concerns are as follows.



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Wetland Impacts:

As acknowledged in the FEIS, the wetlands adjacent to the Great Salt Lake are a national treasure. They serve as critical habitat for a variety of birds, reptiles, amphibians and mammals (some of which are endangered) and provide recreational opportunities such as waterfowl hunting, birdwatching and boating to the residents and visitors of the Great Salt Lake Valley. The wetlands are important factors in the biochemistry, flora and fauna of the area and support an internationally important link of the Pacific Flyway for migratory waterfowl and the Western Hemisphere Shorebird Reserve Network. The wetlands in the project area are an integral subset of the Great Salt Lake System. Many of the wetlands adjacent to the Great Salt Lake have been lost as a result of agricultural and municipal drainage and filling practices, and this is expected to continue as long as population growth in the region continues.

While FHWA in the FEIS has selected an alternative which impacts fewer wetlands of national significance than the selected alternative in the DEIS, the currently preferred alternative is still not the least damaging alternative presented in the FEIS. The FEIS now includes an indirect wetland impact analysis which was used to develop the functional capacity unit values. This new analysis indicates that there is at least one less damaging alternatives available, from the environmental perspective, than the preferred alternative. The FEIS now indicates the preferred alternative results in a direct loss of 114 acres and 666 functional capacity units, while Alternative A results in a direct loss of 108 acres and 605 functional capacity units. The Clean Water Act Section 404(b)(1) Guidelines require the selection of the least environmentally damaging practicable alternative. We have provided additional detailed comments regarding the alternatives analysis process and wetland impacts in our enclosed 404 permit comment letter to the Corps.

The FEIS also indicates that the primary method to offset the wetland functions which would be directly and indirectly impacted by Legacy Parkway is the 1,251 acre Legacy Nature Preserve. We are concerned that this Preserve does not address the no-net-loss of wetland goals of the Administration because the Preserve primarily protects existing wetlands, rather than restoring previously lost wetlands. We are also concerned that only some 300 acres of the 1,251 acre preserve is wetlands. Although a "Preserve," as proposed, it would not protect these wetland resources in perpetuity, because land could still being subject to condemnation. This is particularly important since the FEIS indicates that the proposed project will not meet future traffic demand, inferring that Legacy Parkway may be expanded. Resolution of these issues would include expanding the mitigation proposal substantially to include more hydrologic restoration as well as wetland preservation, ensuring the preserved areas are increased to an adequate level, and placing the mitigation areas in an ownership that is not subject to Utah condemnation proceedings or other actions that threaten the wetlands. These issues are addressed in detail in our enclosed CWA Section 404 comment letter to the Corps.

Project Purpose and Alternatives:

The purpose and need for the project seem to have changed significantly from the DEIS. The transportation demand analysis which was included in the DEIS has undergone significant changes as a result of the 1999 peer review of the travel demand model. This demand analysis has been the major criterion used to determine the reasonableness of an alternative for inclusion in the detailed EIS analyses. Unfortunately, based on our review of the FEIS and comments received at the post FEIS public hearing held August 23, 2000, there are still significant questions concerning the model results.

Some public stakeholders have raised concerns that the model outputs do not make sense, and that they cannot be duplicated through independent runs of the travel model. Per EPA's review, the model results presented in Appendix P of the FEIS are indeed counterintuitive, in that expanding the roadway network results in lower rather than higher speeds, peak period (congested) speeds are higher than average daily speeds, and the modeled speeds themselves seem unreasonably low compared to 2020 estimates from other cities in our region. EPA is concerned that the low speeds may result in an inaccurate air quality analysis for this project, as well as for future conformity and State Implementation Plan analyses, and that projected traffic volumes, upon which the FEIS relies heavily, may also be inaccurate. In an August 28, 2000 conference call with FHWA and Wasatch Front Regional Council (WFRC) staff, WFRC staff indicated that the model results they provided to UDOT and its consultants had been misinterpreted, and that FHWA was working with these organizations to correct the tables in the FEIS. These modeling questions should be reconciled prior to a decision on the project. EPA is interested in participating with technical staff from the affected parties to reconcile the modeling issues.

The criterion used to select alternatives to meet the project purpose also seems to have changed significantly from the DEIS. In the DEIS, the criterion for alternative selection was that the alternative must meet the 2020 transportation demand "at Level of Service (LOS) D" for the alternative to be considered reasonable. While EPA did not disagree with this criterion, EPA recommended that other alternatives (in particular a "non-construction" alternative which would consist of improved mass transit options and expansion of existing facilities) be carried forward in detail because the DEIS identified a scenario (transit plus I-15 expansion) in which the "non-construction" alternative would nearly meet the demand in a much less environmentally damaging manner.

Now, in the FEIS, while the lead agencies still indicate that the "non-construction" alternative is not reasonable for evaluation because it cannot meet the 2020 demand (which has been increased in the FEIS by about 30% [18490 to 24110 passenger car equivalents per hour]), the FEIS concludes that the preferred alternative also does not meet the 2020 transportation demand. Since none of the alternatives now meets the 2020 demand, any alternative which provides a reasonable portion of that demand should be considered reasonable.

While the preferred alternative meets more of the projected demand than any non-Legacy

construction alternative, it does not completely satisfy the projected need. Importantly, CWA Section 404 requires selecting the alternative that is the least environmentally damaging while still accomplishing the project purpose, not selection of the most reasonable alternative. EPA believes there is an opportunity for FHWA and UDOT to consider the implementation of the non-construction portions of the “shared solution,” especially to make a commitment to accelerate construction of transit.

Connected Actions:

It appears that the Legacy Parkway project is now a connected action to the I-15 expansion project. The FEIS indicates that the 10 lane I-15 alternative would not be constructed if Legacy Parkway were not be constructed, a change from the DEIS. I-15 expansion and Legacy Parkway were previously treated as separate projects with separate EISs. The implication was that either project could be constructed independent of the other. The FEIS indicates that, without Legacy Parkway, expansion of I-15 to 10 lanes would be too costly to the user from a lost time perspective. EPA believes it is unrealistic to assume, as the FEIS does, that if Legacy Parkway is not constructed, I-15 would not be upgraded. I-15 is currently being expanded without Legacy Parkway, and the users are assuming the lost time costs. In either case, if Legacy Parkway decisions are now so inextricably connected with I-15 decisions, the complete impact analysis for both systems, plus the projected actions needed to meet the unmet 2020 demand, need to be addressed.

Reasonably Foreseeable Future Actions:

The FEIS now indicates that a decision on expansion of Legacy Parkway would have to be made within 12 years to keep up with the unmet demand. This clearly would be a reasonably foreseeable future action (40 C.F.R.1508.25(a)(3)), whose implication should be considered before a decision is made on the Parkway, as currently proposed.

The FEIS maintains that “the remainder of a full Legacy Highway has not been defined and may never be constructed. The Highway is only a concept, and there is no foreseeable implementation of the complete concept, thus reducing any evaluation to essentially speculation.” This is in spite of the fact that the WFRRC Long Range Transportation Plan budgets for right-of-way purchases northwest of the airport, south to the Utah County line, and between the northern terminus of the current segment and 5500 South in Roy; budgets for construction of several segments of 5600 West in the Legacy alignment; and lists the construction of the segment northwest of the airport, south to the Utah County line, and from Highway 89 north to 12th Street west of Ogden as “illustrative” projects, meaning that they would be constructed if funding were available. The WFRRC Transportation Improvement Program includes \$3 million for preliminary engineering and environmental work on the segment north from Highway 89 to 12th Street west of Ogden, which implies that there is some anticipation that funding will become available for at least this segment. While we concede that the segment of the project analyzed in the FEIS does have logical termini and independent utility, we also maintain that construction of these additional

Legacy segments is not completely “speculative.” A comprehensive environmental analysis needs to be conducted before selection of right-of-way which intrinsically limits environmental choices even before the next NEPA process. As several of these corridors would obviously result in major wetland impacts, we are especially concerned about the potential cumulative wetland impact.

In summary, EPA is still concerned with the accuracy and reproducibility of the traffic demand modeling, the apparent change in project purpose and subsequent selection of alternatives for detailed analysis, lack of analyses of connected and reasonable foreseeable actions, the selection of other than the least damaging alternative, and the substantial inadequacy of the proposed wetlands mitigation. These issues should be resolved before a Record of Decision is completed. If you have any questions regarding these comments, please contact me at the above address or have your staff contact Dave Ruiter at (303) 312-6794.

Sincerely,

Original Signed by

Rebecca W. Hanmer
Acting Regional Administrator

Enclosure

cc: Reed Harris, U.S. F&WS
Jaye Melcher, UDWR
Brooks Carter, USACE
John Ettinger, EPA, Washington, D.C.